

TSA ADMINISTRATOR MODERNIZATION ACT OF 2017

MARCH 15, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. McCAUL, from the Committee on Homeland Security,
submitted the following

R E P O R T

[To accompany H.R. 1309]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security, to whom was referred the bill (H.R. 1309) to streamline the office and term of the Administrator of the Transportation Security Administration, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 1309 is to update the office and term of the Administrator of the Transportation Security Administration (TSA)

to conform with current policy. H.R. 1309, the “TSA Administrator Modernization Act of 2017,” re-establishes the official position, level, and term of the TSA Administrator. It also adds the Administrator as an officer of the Department of Homeland Security (DHS) and ensures that the Administrator’s level and pay rate are appropriate for an Assistant Secretary. Additionally, this bill updates Federal statute to reflect current policy by clarifying that TSA is a component of DHS and ensuring that the Administrator has the appropriate title, as well as the 5-year term originally intended by Congress.

BACKGROUND AND NEED FOR LEGISLATION

The TSA was originally created in 2001 as part of the Department of Transportation (DOT). However, when TSA and its functions were transferred from DOT to DHS via the Homeland Security Act of 2002, the Administrator’s position and 5-year term officially terminated. Since the Administrator’s position and term did not transfer, DHS has been using one of the available Assistant Secretary positions for the Administrator.

This creates problems with transparency and consistency. Since 2015, five different people have served as the TSA Administrator—both as appointees and as acting administrators. Additionally, Administrator Neffenger offered his resignation to President Trump in January 2017 after less than 2 years of service, since the 5-year term was no longer in effect. This bill addresses these issues and gaps by re-establishing the Administrator’s position, level, and term, which will ensure more consistent leadership at TSA.

HEARINGS

The Committee did not hold any legislative hearings on H.R. 1309 in the 115th Congress. However, this legislation was informed by a Subcommittee on Transportation and Protective Security Subcommittee hearing on February 2, 2017, entitled “The Future of the Transportation Security Administration.” The Subcommittee received testimony from Mr. Roger Dow, CEO, U.S. Travel Association; Ms. Nina Brooks, Head of Security, Airports Council International; and Mr. J. David Cox, National President, American Federation of Government Employees.

COMMITTEE CONSIDERATION

The Committee met on March 8, 2017, to consider H.R. 1309, and ordered the measure to be reported to the House with a favorable recommendation, without amendment, by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto.

No recorded votes were requested during consideration of H.R. 1309.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held oversight hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 1309, the TSA Administrator Modernization Act of 2017, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 13, 2017.

Hon. MICHAEL MCCAUL,
*Chairman, Committee on Homeland Security,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1309 the TSA Administrator Modernization Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 1309—TSA Administrator Modernization Act of 2017

H.R. 1309 would amend current law to specify the term of the Administrator of the Transportation Security Administration (TSA) and clarify other details regarding that position within the Department of Homeland Security (DHS).

According to DHS, the proposed changes to current law would codify longstanding policy regarding the role and position of the TSA Administrator within DHS; as a result, CBO estimates that enacting the bill would not affect federal spending.

Enacting H.R. 1309 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply. CBO estimates that enacting H.R. 1309 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 1309 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Megan Carroll. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 1309 contains the following general performance goals and objectives, including outcome related goals and objectives authorized.

This legislation ensures that the Administrator of the Transportation Security Administration (TSA), and TSA in general, is able to effectively carry out the proper responsibilities within the Department by clarifying the role, title, and term of the office.

DUPLICATIVE FEDERAL PROGRAMS

Pursuant to clause 3(c) of rule XIII, the Committee finds that H.R. 1309 does not contain any provision that establishes or reauthorizes a program known to be duplicative of another Federal program.

CONGRESSIONAL EARMARKS, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

In compliance with rule XXI of the Rules of the House of Representatives, this bill, as reported, contains no congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of the rule XXI.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

PREEMPTION CLARIFICATION

In compliance with section 423 of the Congressional Budget Act of 1974, requiring the report of any Committee on a bill or joint resolution to include a statement on the extent to which the bill or joint resolution is intended to preempt State, local, or Tribal law, the Committee finds that H.R. 1309 does not preempt any State, local, or Tribal law.

DISCLOSURE OF DIRECTED RULE MAKINGS

The Committee estimates that H.R. 1309 would require no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section provides that this bill may be cited as the “TSA Administrator Modernization Act of 2017”.

Sec. 2. Amendments to the Homeland Security Act of 2002 and Title 5, United States Code

This section amends the Homeland Security Act of 2002 by reducing from 12 to 11 the number of Assistant Secretaries available under subparagraph (I) of paragraph (1) of section 103(a), and by adding the Administrator of the Transportation Security Administration as an officer of DHS under paragraph (1) of section 103(a).

Additionally, this section amends Section 5315 of Title 5 of the United States Code to include the TSA Administrator as a position to which Level IV of the Executive Schedule applies.

Sec. 3. Amendments to Title 49, United States Code

This section amends Section 114 of Title 49 of the United States Code by striking references to the Department of Transportation, Secretary of Transportation, and Under Secretary of Transportation for Security and replacing them with references to the Department of Homeland Security, Secretary of Homeland Security, and Administrator of the Transportation Security Administration, as appropriate.

This section also amends Section 114 of Title 49 of the United States Code by replacing “Federal Security Managers” with “Federal Security Directors” in subparagraph (6) of subsection (f), and inserting “air carriers or” before “foreign air carriers” in subparagraph (14) of subsection (f).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE I—DEPARTMENT OF HOMELAND SECURITY

* * * * *

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—

(1) IN GENERAL.—Except as provided under paragraph (2), there are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(A) A Deputy Secretary of Homeland Security, who shall be the Secretary’s first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.

- (B) An Under Secretary for Science and Technology.
- (C) A Commissioner of U.S. Customs and Border Protection.
- (D) An Administrator of the Federal Emergency Management Agency.
- (E) A Director of the Bureau of Citizenship and Immigration Services.
- (F) An Under Secretary for Management, who shall be first assistant to the Deputy Secretary of Homeland Security for purposes of subchapter III of chapter 33 of title 5, United States Code.
- (G) A Director of U.S. Immigration and Customs Enforcement.
- (H) An Under Secretary responsible for overseeing critical infrastructure protection, cybersecurity, and other related programs of the Department.
- (I) Not more than ~~12~~ 11 Assistant Secretaries.
- (J) A General Counsel, who shall be the chief legal officer of the Department.
- (K) An Under Secretary for Strategy, Policy, and Plans.

(L) An Administrator of the Transportation Security Administration, in accordance with section 114 of title 49, United States Code.

(2) ASSISTANT SECRETARIES.—If any of the Assistant Secretaries referred to under paragraph (1)(I) is designated to be the Assistant Secretary for Health Affairs, the Assistant Secretary for Legislative Affairs, or the Assistant Secretary for Public Affairs, that Assistant Secretary shall be appointed by the President without the advice and consent of the Senate.

(b) INSPECTOR GENERAL.—There shall be in the Department an Office of Inspector General and an Inspector General at the head of such office, as provided in the Inspector General Act of 1978 (5 U.S.C. App.).

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

- (1) A Director of the Secret Service.
- (2) A Chief Information Officer.
- (3) An Officer for Civil Rights and Civil Liberties.
- (4) A Director for Domestic Nuclear Detection.
- (5) Any Director of a Joint Task Force under section 708.

(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.

(f) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

(g) VACANCIES.—

(1) ABSENCE, DISABILITY, OR VACANCY OF SECRETARY OR DEPUTY SECRETARY.—Notwithstanding chapter 33 of title 5, United States Code, the Under Secretary for Management shall serve as the Acting Secretary if by reason of absence, disability, or vacancy in office, neither the Secretary nor Deputy Secretary is available to exercise the duties of the Office of the Secretary.

(2) FURTHER ORDER OF SUCCESSION.—Notwithstanding chapter 33 of title 5, United States Code, the Secretary may designate such other officers of the Department in further order of succession to serve as Acting Secretary.

(3) NOTIFICATION OF VACANCIES.—The Secretary shall notify the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives of any vacancies that require notification under sections 3345 through 3349d of title 5, United States Code (commonly known as the “Federal Vacancies Reform Act of 1998”).

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TITLE 5, UNITED STATES CODE

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PART III—EMPLOYEES

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SUBPART D—PAY AND ALLOWANCES

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

Assistant Administrators, Agency for International Development (6).

Regional Assistant Administrators, Agency for International Development (4).

Assistant Secretaries of Agriculture (3).

Assistant Secretaries of Commerce (11).

Assistant Secretaries of Defense (14).

Assistant Secretaries of the Air Force (4).

Assistant Secretaries of the Army (5).

Assistant Secretaries of the Navy (4).

Assistant Secretaries of Health and Human Services (6).

Assistant Secretaries of the Interior (6).

Assistant Attorneys General (11).

Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.

Administrator, Wage and Hour Division, Department of Labor.

Assistant Secretaries of State (24) and 4 other State Department officials to be appointed by the President, by and with the advice and consent of the Senate.

Assistant Secretaries of the Treasury (10).

Members, United States International Trade Commission (5).

Assistant Secretaries of Education (10).

General Counsel, Department of Education.

Director of Civil Defense, Department of the Army.

Deputy Director of the Office of Emergency Planning.

Deputy Director of the Office of Science and Technology.

Deputy Director of the Peace Corps.

Assistant Directors of the Office of Management and Budget

(3).

General Counsel of the Department of Agriculture.

General Counsel of the Department of Commerce.

General Counsel of the Department of Defense.

General Counsel of the Department of Health and Human Services.

Solicitor of the Department of the Interior.

Solicitor of the Department of Labor.

General Counsel of the National Labor Relations Board.

General Counsel of the Department of the Treasury.

First Vice President of the Export-Import Bank of Washington.

Members, Council of Economic Advisers.

Members, Board of Directors of the Export-Import Bank of Washington.

Members, Federal Communications Commission.

Member, Board of Directors of the Federal Deposit Insurance Corporation.

Directors, Federal Housing Finance Board.

Members, Federal Energy Regulatory Commission.

Members, Federal Trade Commission.

Members, Surface Transportation Board.

Members, National Labor Relations Board.

Members, Securities and Exchange Commission.

Members, Merit Systems Protection Board.

Members, Federal Maritime Commission.

Members, National Mediation Board.

Members, Railroad Retirement Board.

Director of Selective Service.

Associate Director of the Federal Bureau of Investigation, Department of Justice.

Members, Equal Employment Opportunity Commission (4).

Director, Community Relations Service.

Members, National Transportation Safety Board.

General Counsel, Department of Transportation.

Deputy Administrator, Federal Aviation Administration.

Assistant Secretaries of Transportation (5).

Deputy Federal Highway Administrator.

Administrator of the Saint Lawrence Seaway Development Corporation.

Assistant Secretary for Science, Smithsonian Institution.

Assistant Secretary for History and Art, Smithsonian Institution.

Deputy Administrator of the Small Business Administration.

Assistant Secretaries of Housing and Urban Development (8).

General Counsel of the Department of Housing and Urban Development.

Commissioner of Interama.

Federal Insurance Administrator, Federal Emergency Management Agency.

Executive Vice President, Overseas Private Investment Corporation.

Members, National Credit Union Administration Board (2).

Members, Postal Regulatory Commission (4).

Members, Occupational Safety and Health Review Commission.

Deputy Under Secretaries of the Treasury (or Assistant Secretaries of the Treasury) (2).

Members, Consumer Product Safety Commission (4).

Members, Commodity Futures Trading Commission.

Director of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

Director of Nuclear Material Safety and Safeguards, Nuclear Regulatory Commission.

Director of Nuclear Regulatory Research, Nuclear Regulatory Commission.

Executive Director for Operations, Nuclear Regulatory Commission.

President, Government National Mortgage Association, Department of Housing and Urban Development.

Assistant Secretary of Commerce for Oceans and Atmosphere, the incumbent of which also serves as Deputy Administrator of the National Oceanic and Atmospheric Administration.

Director, Bureau of Prisons, Department of Justice.

Assistant Secretaries of Energy (8).

General Counsel of the Department of Energy.

Administrator, Economic Regulatory Administration, Department of Energy.

Administrator, Energy Information Administration, Department of Energy.

Director, Office of Indian Energy Policy and Programs, Department of Energy.

Director, Office of Science, Department of Energy.

Assistant Secretary of Labor for Mine Safety and Health.

Members, Federal Mine Safety and Health Review Commission.

President, National Consumer Cooperative Bank.

Special Counsel of the Merit Systems Protection Board.

Chairman, Federal Labor Relations Authority.

Assistant Secretaries, Department of Homeland Security.

General Counsel, Department of Homeland Security.

Officer for Civil Rights and Civil Liberties, Department of Homeland Security.

Chief Financial Officer, Department of Homeland Security.

Chief Information Officer, Department of Homeland Security.

Deputy Director, Institute for Scientific and Technological Cooperation.

Director of the National Institute of Justice.

Director of the Bureau of Justice Statistics.

Chief Counsel for Advocacy, Small Business Administration.

Assistant Administrator for Toxic Substances, Environmental Protection Agency.

Assistant Administrator, Office of Solid Waste, Environmental Protection Agency.

Assistant Administrators, Environmental Protection Agency (8).

Director of Operational Test and Evaluation, Department of Defense.

Director of Cost Assessment and Program Evaluation, Department of Defense.

Special Representatives of the President for arms control, nonproliferation, and disarmament matters, Department of State.

Ambassadors at Large.

Assistant Secretary of Commerce and Director General of the United States and Foreign Commercial Service.

Assistant Secretaries, Department of Veterans Affairs (7).

General Counsel, Department of Veterans Affairs.

Commissioner of Food and Drugs, Department of Health and Human Services

Chairman, Board of Veterans' Appeals.

Administrator, Office of Juvenile Justice and Delinquency Prevention.

Director, United States Marshals Service.

Chairman, United States Parole Commission.

Director, Bureau of the Census, Department of Commerce.

Director of the Institute of Museum and Library Services.

Chief Financial Officer, Department of Agriculture.

Chief Financial Officer, Department of Commerce.

Chief Financial Officer, Department of Education.

Chief Financial Officer, Department of Energy.

Chief Financial Officer, Department of Health and Human Services.

Chief Financial Officer, Department of Housing and Urban Development.

Chief Financial Officer, Department of the Interior.

Chief Financial Officer, Department of Justice.

Chief Financial Officer, Department of Labor.

Chief Financial Officer, Department of State.

Chief Financial Officer, Department of Transportation.

Chief Financial Officer, Department of the Treasury.

Chief Financial Officer, Department of Veterans Affairs.

Chief Financial Officer, Environmental Protection Agency.

Chief Financial Officer, National Aeronautics and Space Administration.

Commissioner, Office of Navajo and Hopi Indian Relocation.
 Principal Deputy Under Secretary of Defense for Policy.
 Principal Deputy Under Secretary of Defense for Personnel
 and Readiness.
 Principal Deputy Under Secretary of Defense (Comptroller).
 Principal Deputy Under Secretary of Defense for Intel-
 ligence.
 General Counsel of the Department of the Army.
 General Counsel of the Department of the Navy.
 General Counsel of the Department of the Air Force.
 Liaison for Community and Junior Colleges, Department of
 Education.
 Director of the Office of Educational Technology.
 Director of the International Broadcasting Bureau.
 The Commissioner of Labor Statistics, Department of Labor.
 Administrator, Rural Utilities Service, Department of Agri-
 culture.
 Chief Information Officer, Department of Agriculture.
 Chief Information Officer, Department of Commerce.
 Chief Information Officer, Department of Defense (unless the
 official designated as the Chief Information Officer of the De-
 partment of Defense is an official listed under section 5312,
 5313, or 5314 of this title).
 Chief Information Officer, Department of Education.
 Chief Information Officer, Department of Energy.
 Chief Information Officer, Department of Health and Human
 Services.
 Chief Information Officer, Department of Housing and
 Urban Development.
 Chief Information Officer, Department of the Interior.
 Chief Information Officer, Department of Justice.
 Chief Information Officer, Department of Labor.
 Chief Information Officer, Department of State.
 Chief Information Officer, Department of Transportation.
 Chief Information Officer, Department of the Treasury.
 Chief Information Officer, Department of Veterans Affairs.
 Chief Information Officer, Environmental Protection Agency.
 Chief Information Officer, National Aeronautics and Space
 Administration.
 Chief Information Officer, Agency for International Develop-
 ment.
 Chief Information Officer, Federal Emergency Management
 Agency.
 Chief Information Officer, General Services Administration.
 Chief Information Officer, National Science Foundation.
 Chief Information Officer, Nuclear Regulatory Agency.
 Chief Information Officer, Office of Personnel Management.
 Chief Information Officer, Small Business Administration.
 Chief Information Officer of the Intelligence Community.
 General Counsel of the Central Intelligence Agency.
 Principal Deputy Administrator, National Nuclear Security
 Administration.
 Additional Deputy Administrators of the National Nuclear
 Security Administration (3), but if the Deputy Administrator
 for Naval Reactors is an officer of the Navy on active duty, (2).

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

General Counsel of the Office of the Director of National Intelligence.

Chief Medical Officer, Department of Homeland Security.

*Administrator of the Transportation Security Administration,
Department of Homeland Security.*

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TITLE 49, UNITED STATES CODE

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SUBTITLE I—DEPARTMENT OF TRANSPORTATION

* * * * *

CHAPTER 1—ORGANIZATION

* * * * *

§ 114. Transportation Security Administration

(a) IN GENERAL.—The Transportation Security Administration shall be an administration of the [Department of Transportation] *Department of Homeland Security*.

(b) [UNDER SECRETARY] *ADMINISTRATOR*.—

(1) APPOINTMENT.—The head of the Administration shall be the [Under Secretary of Transportation for Security] *Administrator of the Transportation Security Administration*. The [Under Secretary] *Administrator* shall be appointed by the President, by and with the advice and consent of the Senate.

(2) QUALIFICATIONS.—The [Under Secretary] *Administrator* must—

(A) be a citizen of the United States; and

(B) have experience in a field directly related to transportation or security.

(3) TERM.—The term of office of an individual appointed as the [Under Secretary] *Administrator* shall be 5 years.

(c) LIMITATION ON OWNERSHIP OF STOCKS AND BONDS.—The [Under Secretary] *Administrator* may not own stock in or bonds of a transportation or security enterprise or an enterprise that makes equipment that could be used for security purposes.

(d) FUNCTIONS.—The [Under Secretary] *Administrator* shall be responsible for security in all modes of transportation, including—

(1) carrying out chapter 449, relating to civil aviation security, and related research and development activities; and

(2) security responsibilities over other modes of transportation that are exercised by the Department of Transportation.

(e) SCREENING OPERATIONS.—The [Under Secretary] *Administrator* shall—

(1) be responsible for day-to-day Federal security screening operations for passenger air transportation and intrastate air transportation under sections 44901 and 44935;

(2) develop standards for the hiring and retention of security screening personnel;

(3) train and test security screening personnel; and

(4) be responsible for hiring and training personnel to provide security screening at all airports in the United States where screening is required under section 44901, in consultation with the [Secretary of Transportation] *Secretary of Homeland Security* and the heads of other appropriate Federal agencies and departments.

(f) ADDITIONAL DUTIES AND POWERS.—In addition to carrying out the functions specified in subsections (d) and (e), the [Under Secretary] *Administrator* shall—

(1) receive, assess, and distribute intelligence information related to transportation security;

(2) assess threats to transportation;

(3) develop policies, strategies, and plans for dealing with threats to transportation security;

(4) make other plans related to transportation security, including coordinating countermeasures with appropriate departments, agencies, and instrumentalities of the United States Government;

(5) serve as the primary liaison for transportation security to the intelligence and law enforcement communities;

(6) on a day-to-day basis, manage and provide operational guidance to the field security resources of the Administration, including [Federal Security Managers] *Federal Security Directors* as provided by section 44933;

(7) enforce security-related regulations and requirements;

(8) identify and undertake research and development activities necessary to enhance transportation security;

(9) inspect, maintain, and test security facilities, equipment, and systems;

(10) ensure the adequacy of security measures for the transportation of cargo;

(11) oversee the implementation, and ensure the adequacy, of security measures at airports and other transportation facilities;

(12) require background checks for airport security screening personnel, individuals with access to secure areas of airports, and other transportation security personnel;

(13) work in conjunction with the Administrator of the Federal Aviation Administration with respect to any actions or activities that may affect aviation safety or air carrier operations;

(14) work with the International Civil Aviation Organization and appropriate aeronautic authorities of foreign governments under section 44907 to address security concerns on passenger flights by *air carriers* or foreign air carriers in foreign air transportation; and

(15) carry out such other duties, and exercise such other powers, relating to transportation security as the [Under Secretary] *Administrator* considers appropriate, to the extent authorized by law.

(g) NATIONAL EMERGENCY RESPONSIBILITIES.—

(1) IN GENERAL.—Subject to the direction and control of [the Secretary] *the Secretary of Homeland Security*, the [Under Secretary] *Administrator*, during a national emergency, shall have the following responsibilities:

(A) To coordinate domestic transportation, including aviation, rail, and other surface transportation, and maritime transportation (including port security).

(B) To coordinate and oversee the transportation-related responsibilities of other departments and agencies of the Federal Government other than the Department of Defense and the military departments.

(C) To coordinate and provide notice to other departments and agencies of the Federal Government, and appropriate agencies of State and local governments, including departments and agencies for transportation, law enforcement, and border control, about threats to transportation.

(D) To carry out such other duties, and exercise such other powers, relating to transportation during a national emergency as [the Secretary] *the Secretary of Homeland Security* shall prescribe.

(2) AUTHORITY OF OTHER DEPARTMENTS AND AGENCIES.—The authority of the [Under Secretary] *Administrator* under this subsection shall not supersede the authority of any other department or agency of the Federal Government under law with respect to transportation or transportation-related matters, whether or not during a national emergency.

(3) CIRCUMSTANCES.—[The Secretary] *The Secretary of Homeland Security* shall prescribe the circumstances constituting a national emergency for purposes of this subsection.

(h) MANAGEMENT OF SECURITY INFORMATION.—In consultation with the Transportation Security Oversight Board, the [Under Secretary] *Administrator* shall—

(1) enter into memoranda of understanding with Federal agencies or other entities to share or otherwise cross-check as necessary data on individuals identified on Federal agency databases who may pose a risk to transportation or national security;

(2) establish procedures for notifying the Administrator of the Federal Aviation Administration, appropriate State and local law enforcement officials, and airport or airline security officers of the identity of individuals known to pose, or suspected of posing, a risk of air piracy or terrorism or a threat to airline or passenger safety;

(3) in consultation with other appropriate Federal agencies and air carriers, establish policies and procedures requiring air carriers—

(A) to use information from government agencies to identify individuals on passenger lists who may be a threat to civil aviation or national security; and

(B) if such an individual is identified, notify appropriate law enforcement agencies, prevent the individual from boarding an aircraft, or take other appropriate action with respect to that individual; and

(4) consider requiring passenger air carriers to share passenger lists with appropriate Federal agencies for the purpose of identifying individuals who may pose a threat to aviation safety or national security.

(i) VIEW OF NTSB.—In taking any action under this section that could affect safety, the [Under Secretary] *Administrator* shall give great weight to the timely views of the National Transportation Safety Board.

(j) ACQUISITIONS.—

(1) IN GENERAL.—The [Under Secretary] *Administrator* is authorized—

(A) to acquire (by purchase, lease, condemnation, or otherwise) such real property, or any interest therein, within and outside the continental United States, as the [Under Secretary] *Administrator* considers necessary;

(B) to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain such personal property (including office space and patents), or any interest therein, within and outside the continental United States, as the [Under Secretary] *Administrator* considers necessary;

(C) to lease to others such real and personal property and to provide by contract or otherwise for necessary facilities for the welfare of its employees and to acquire, maintain and operate equipment for these facilities;

(D) to acquire services, including such personal services as [the Secretary] *the Secretary of Homeland Security* determines necessary, and to acquire (by purchase, lease, condemnation, or otherwise) and to construct, repair, operate, and maintain research and testing sites and facilities; and

(E) in cooperation with the Administrator of the Federal Aviation Administration, to utilize the research and development facilities of the Federal Aviation Administration.

(2) TITLE.—Title to any property or interest therein acquired pursuant to this subsection shall be held by the Government of the United States.

(k) TRANSFERS OF FUNDS.—The [Under Secretary] *Administrator* is authorized to accept transfers of unobligated balances and unexpended balances of funds appropriated to other Federal agencies (as such term is defined in section 551(1) of title 5) to carry out functions transferred, on or after the date of enactment of the Aviation and Transportation Security Act, by law to the [Under Secretary] *Administrator*.

(l) REGULATIONS.—

(1) IN GENERAL.—The [Under Secretary] *Administrator* is authorized to issue, rescind, and revise such regulations as are necessary to carry out the functions of the Administration.

(2) EMERGENCY PROCEDURES.—

(A) IN GENERAL.—Notwithstanding any other provision of law or executive order (including an executive order requiring a cost-benefit analysis), if the [Under Secretary] *Administrator* determines that a regulation or security directive must be issued immediately in order to protect transportation security, the [Under Secretary] *Adminis-*

trator shall issue the regulation or security directive without providing notice or an opportunity for comment and without prior approval of **the Secretary** *the Secretary of Homeland Security*.

(B) REVIEW BY TRANSPORTATION SECURITY OVERSIGHT BOARD.—Any regulation or security directive issued under this paragraph shall be subject to review by the Transportation Security Oversight Board established under section 115. Any regulation or security directive issued under this paragraph shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the **Under Secretary** *Administrator*.

(3) FACTORS TO CONSIDER.—In determining whether to issue, rescind, or revise a regulation under this section, the **Under Secretary** *Administrator* shall consider, as a factor in the final determination, whether the costs of the regulation are excessive in relation to the enhancement of security the regulation will provide. The **Under Secretary** *Administrator* may waive requirements for an analysis that estimates the number of lives that will be saved by the regulation and the monetary value of such lives if the **Under Secretary** *Administrator* determines that it is not feasible to make such an estimate.

(4) AIRWORTHINESS OBJECTIONS BY FAA.—

(A) IN GENERAL.—The **Under Secretary** *Administrator* shall not take an aviation security action under this title if the Administrator of the Federal Aviation Administration notifies the **Under Secretary** *Administrator* that the action could adversely affect the airworthiness of an aircraft.

(B) REVIEW BY SECRETARY.—Notwithstanding subparagraph (A), the **Under Secretary** *Administrator* may take such an action, after receiving a notification concerning the action from **the Administrator under subparagraph (A)** *the Administrator of the Federal Aviation Administration under subparagraph (A)*, if the Secretary of Transportation subsequently approves the action.

(m) PERSONNEL AND SERVICES; COOPERATION BY **UNDER SECRETARY** *ADMINISTRATOR*.—

(1) AUTHORITY OF **UNDER SECRETARY** *ADMINISTRATOR*.—In carrying out the functions of the Administration, the **Under Secretary** *Administrator* shall have the same authority as is provided to the Administrator of the Federal Aviation Administration under subsections (l) and (m) of section 106.

(2) AUTHORITY OF AGENCY HEADS.—The head of a Federal agency shall have the same authority to provide services, supplies, equipment, personnel, and facilities to the **Under Secretary** *Administrator* as the head has to provide services, supplies, equipment, personnel, and facilities to the Administrator of the Federal Aviation Administration under section 106(m).

(n) PERSONNEL MANAGEMENT SYSTEM.—The personnel management system established by the Administrator of the Federal Aviation Administration under section 40122 shall apply to employees of the Transportation Security Administration, or, subject to the requirements of such section, the **Under Secretary** *Administrator* may make such modifications to the personnel management system

with respect to such employees as the [Under Secretary] *Administrator* considers appropriate, such as adopting aspects of other personnel systems of the [Department of Transportation] *Department of Homeland Security*.

(o) **AUTHORITY OF INSPECTOR GENERAL.**—The Transportation Security Administration shall be subject to the Inspector General Act of 1978 (5 U.S.C. App.) and other laws relating to the authority of the Inspector General of the [Department of Transportation] *Department of Homeland Security*.

(p) **LAW ENFORCEMENT POWERS.**—

(1) **IN GENERAL.**—The [Under Secretary] *Administrator* may designate an employee of the Transportation Security Administration or other Federal agency to serve as a law enforcement officer.

(2) **POWERS.**—While engaged in official duties of the Administration as required to fulfill the responsibilities under this section, a law enforcement officer designated under paragraph (1) may—

(A) carry a firearm;

(B) make an arrest without a warrant for any offense against the United States committed in the presence of the officer, or for any felony cognizable under the laws of the United States if the officer has probable cause to believe that the person to be arrested has committed or is committing the felony; and

(C) seek and execute warrants for arrest or seizure of evidence issued under the authority of the United States upon probable cause that a violation has been committed.

(3) **GUIDELINES ON EXERCISE OF AUTHORITY.**—The authority provided by this subsection shall be exercised in accordance with guidelines prescribed by the [Under Secretary] *Administrator*, in consultation with the Attorney General of the United States, and shall include adherence to the Attorney General's policy on use of deadly force.

(4) **REVOCATION OR SUSPENSION OF AUTHORITY.**—The powers authorized by this subsection may be rescinded or suspended should the Attorney General determine that the [Under Secretary] *Administrator* has not complied with the guidelines prescribed in paragraph (3) and conveys the determination in writing to the [Secretary of Transportation] *Secretary of Homeland Security* and the [Under Secretary] *Administrator*.

(q) **AUTHORITY TO EXEMPT.**—The [Under Secretary] *Administrator* may grant an exemption from a regulation prescribed in carrying out this section if the [Under Secretary] *Administrator* determines that the exemption is in the public interest.

(r) **NONDISCLOSURE OF SECURITY ACTIVITIES.**—

(1) **IN GENERAL.**—Notwithstanding section 552 of title 5, the [Under Secretary] *Administrator* shall prescribe regulations prohibiting the disclosure of information obtained or developed in carrying out security under authority of the Aviation and Transportation Security Act (Public Law 107-71) or under chapter 449 of this title if the [Under Secretary] *Administrator* decides that disclosing the information would—

(A) be an unwarranted invasion of personal privacy;

(B) reveal a trade secret or privileged or confidential commercial or financial information; or
 (C) be detrimental to the security of transportation.

(2) Availability of information to Congress- Paragraph (1) does not authorize information to be withheld from a committee of Congress authorized to have the information.

(3) Limitation on transferability of duties- Except as otherwise provided by law, the [Under Secretary] *Administrator* may not transfer a duty or power under this subsection to another department, agency, or instrumentality of the United States.

(4) LIMITATIONS.—Nothing in this subsection, or any other provision of law, shall be construed to authorize the designation of information as sensitive security information (as defined in section 1520.5 of title 49, Code of Federal Regulations)—

(A) to conceal a violation of law, inefficiency, or administrative error;

(B) to prevent embarrassment to a person, organization, or agency;

(C) to restrain competition; or

(D) to prevent or delay the release of information that does not require protection in the interest of transportation security, including basic scientific research information not clearly related to transportation security.

(s) TRANSPORTATION SECURITY STRATEGIC PLANNING.—

(1) IN GENERAL.—The Secretary of Homeland Security shall develop, prepare, implement, and update, as needed—

(A) a National Strategy for Transportation Security; and

(B) transportation modal security plans addressing security risks, including threats, vulnerabilities, and consequences, for aviation, railroad, ferry, highway, maritime, pipeline, public transportation, over-the-road bus, and other transportation infrastructure assets.

(2) ROLE OF SECRETARY OF TRANSPORTATION.—The Secretary of Homeland Security shall work jointly with the Secretary of Transportation in developing, revising, and updating the documents required by paragraph (1).

(3) CONTENTS OF NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—The National Strategy for Transportation Security shall include the following:

(A) An identification and evaluation of the transportation assets in the United States that, in the interests of national security and commerce, must be protected from attack or disruption by terrorist or other hostile forces, including modal security plans for aviation, bridge and tunnel, commuter rail and ferry, highway, maritime, pipeline, rail, mass transit, over-the-road bus, and other public transportation infrastructure assets that could be at risk of such an attack or disruption.

(B) The development of risk-based priorities, based on risk assessments conducted or received by the Secretary of Homeland Security (including assessments conducted under the Implementing Recommendations of the 9/11 Commission Act of 2007 across all transportation modes

and realistic deadlines for addressing security needs associated with those assets referred to in subparagraph (A).

(C) The most appropriate, practical, and cost-effective means of defending those assets against threats to their security.

(D) A forward-looking strategic plan that sets forth the agreed upon roles and missions of Federal, State, regional, local, and tribal authorities and establishes mechanisms for encouraging cooperation and participation by private sector entities, including nonprofit employee labor organizations, in the implementation of such plan.

(E) A comprehensive delineation of prevention, response, and recovery responsibilities and issues regarding threatened and executed acts of terrorism within the United States and threatened and executed acts of terrorism outside the United States to the extent such acts affect United States transportation systems.

(F) A prioritization of research and development objectives that support transportation security needs, giving a higher priority to research and development directed toward protecting vital transportation assets. Transportation security research and development projects shall be based, to the extent practicable, on such prioritization. Nothing in the preceding sentence shall be construed to require the termination of any research or development project initiated by the Secretary of Homeland Security or the Secretary of Transportation before the date of enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007.

(G) A 3- and 10-year budget for Federal transportation security programs that will achieve the priorities of the National Strategy for Transportation Security.

(H) Methods for linking the individual transportation modal security plans and the programs contained therein, and a plan for addressing the security needs of intermodal transportation.

(I) Transportation modal security plans described in paragraph (1)(B), including operational recovery plans to expedite, to the maximum extent practicable, the return to operation of an adversely affected transportation system following a major terrorist attack on that system or other incident. These plans shall be coordinated with the resumption of trade protocols required under section 202 of the SAFE Port Act (6 U.S.C. 942) and the National Maritime Transportation Security Plan required under section 70103(a) of title 46.

(4) SUBMISSIONS OF PLANS TO CONGRESS.—

(A) INITIAL STRATEGY.—The Secretary of Homeland Security shall submit the National Strategy for Transportation Security, including the transportation modal security plans, developed under this subsection to the appropriate congressional committees not later than April 1, 2005.

(B) SUBSEQUENT VERSIONS.—After December 31, 2005, the Secretary of Homeland Security shall submit the Na-

tional Strategy for Transportation Security, including the transportation modal security plans and any revisions to the National Strategy for Transportation Security and the transportation modal security plans, to appropriate congressional committees not less frequently than April 1 of each even-numbered year.

(C) PERIODIC PROGRESS REPORT.—

(i) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary of Homeland Security shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Transportation Security, including the transportation modal security plans.

(ii) CONTENT.—Each progress report submitted under this subparagraph shall include, at a minimum, the following:

(I) Recommendations for improving and implementing the National Strategy for Transportation Security and the transportation modal and intermodal security plans that the Secretary of Homeland Security, in consultation with the Secretary of Transportation, considers appropriate.

(II) An accounting of all grants for transportation security, including grants and contracts for research and development, awarded by the Secretary of Homeland Security in the most recent fiscal year and a description of how such grants accomplished the goals of the National Strategy for Transportation Security.

(III) An accounting of all—

(aa) funds requested in the President's budget submitted pursuant to section 1105 of title 31 for the most recent fiscal year for transportation security, by mode;

(bb) personnel working on transportation security by mode, including the number of contractors; and

(cc) information on the turnover in the previous year among senior staff of the Department of Homeland Security, including component agencies, working on transportation security issues. Such information shall include the number of employees who have permanently left the office, agency, or area in which they worked, and the amount of time that they worked for the Department.

(iii) WRITTEN EXPLANATION OF TRANSPORTATION SECURITY ACTIVITIES NOT DELINEATED IN THE NATIONAL STRATEGY FOR TRANSPORTATION SECURITY.—At the end of each fiscal year, the Secretary of Homeland Security shall submit to the appropriate congressional committees a written explanation of any Federal transportation security activity that is inconsistent

with the National Strategy for Transportation Security, including the amount of funds to be expended for the activity and the number of personnel involved.

(D) CLASSIFIED MATERIAL.—Any part of the National Strategy for Transportation Security or the transportation modal security plans that involve information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees separately in a classified format.

(E) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this subsection, the term “appropriate congressional committees” means the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation, the Committee on Homeland Security and Governmental Affairs, and the Committee on Banking, Housing, and Urban Affairs of the Senate.

(5) PRIORITY STATUS.—

(A) IN GENERAL.—The National Strategy for Transportation Security shall be the governing document for Federal transportation security efforts.

(B) OTHER PLANS AND REPORTS.—The National Strategy for Transportation Security shall include, as an integral part or as an appendix—

(i) the current National Maritime Transportation Security Plan under section 70103 of title 46;

(ii) the report required by section 44938 of this title;

(iii) transportation modal security plans required under this section;

(iv) the transportation sector specific plan required under Homeland Security Presidential Directive-7; and

(v) any other transportation security plan or report that the Secretary of Homeland Security determines appropriate for inclusion.

(6) COORDINATION.—In carrying out the responsibilities under this section, the Secretary of Homeland Security, in coordination with the Secretary of Transportation, shall consult, as appropriate, with Federal, State, and local agencies, tribal governments, private sector entities (including nonprofit employee labor organizations), institutions of higher learning, and other entities.

(7) PLAN DISTRIBUTION.—The Secretary of Homeland Security shall make available and appropriately publicize an unclassified version of the National Strategy for Transportation Security, including its component transportation modal security plans, to Federal, State, regional, local and tribal authorities, transportation system owners or operators, private sector stakeholders, including nonprofit employee labor organizations representing transportation employees, institutions of higher learning, and other appropriate entities.

(u) TRANSPORTATION SECURITY INFORMATION SHARING PLAN.—

(1) DEFINITIONS.—In this subsection:

(A) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term “appropriate congressional committees” has the meaning given that term in subsection (s)(4)(E).

(B) PLAN.—The term “Plan” means the Transportation Security Information Sharing Plan established under paragraph (2).

(C) PUBLIC AND PRIVATE STAKEHOLDERS.—The term “public and private stakeholders” means Federal, State, and local agencies, tribal governments, and appropriate private entities, including nonprofit employee labor organizations representing transportation employees.

(D) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(E) TRANSPORTATION SECURITY INFORMATION.—The term “transportation security information” means information relating to the risks to transportation modes, including aviation, public transportation, railroad, ferry, highway, maritime, pipeline, and over-the-road bus transportation, and may include specific and general intelligence products, as appropriate.

(2) ESTABLISHMENT OF PLAN.—The Secretary of Homeland Security, in consultation with the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485), the Secretary of Transportation, and public and private stakeholders, shall establish a Transportation Security Information Sharing Plan. In establishing the Plan, the Secretary shall gather input on the development of the Plan from private and public stakeholders and the program manager of the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485).

(3) PURPOSE OF PLAN.—The Plan shall promote sharing of transportation security information between the Department of Homeland Security and public and private stakeholders.

(4) CONTENT OF PLAN.—The Plan shall include—

(A) a description of how intelligence analysts within the Department of Homeland Security will coordinate their activities within the Department and with other Federal, State, and local agencies, and tribal governments, including coordination with existing modal information sharing centers and the center described in section 1410 of the Implementing Recommendations of the 9/11 Commission Act of 2007;

(B) the establishment of a point of contact, which may be a single point of contact within the Department of Homeland Security, for each mode of transportation for the sharing of transportation security information with public and private stakeholders, including an explanation and justification to the appropriate congressional committees if the point of contact established pursuant to this subparagraph differs from the agency within the Department that has the primary authority, or has been delegated such authority by the Secretary, to regulate the security of that transportation mode;

- (C) a reasonable deadline by which the Plan will be implemented; and
- (D) a description of resource needs for fulfilling the Plan.
- (5) COORDINATION WITH INFORMATION SHARING.—The Plan shall be—
 - (A) implemented in coordination, as appropriate, with the program manager for the information sharing environment established under section 1016 of the Intelligence Reform and Terrorism Prevention Act of 2004 (6 U.S.C. 485); and
 - (B) consistent with the establishment of the information sharing environment and any policies, guidelines, procedures, instructions, or standards established by the President or the program manager for the implementation and management of the information sharing environment.
- (6) REPORTS TO CONGRESS.—
 - (A) IN GENERAL.—Not later than 150 days after the date of enactment of this subsection, and annually thereafter, the Secretary shall submit to the appropriate congressional committees, a report containing the Plan.
 - (B) ANNUAL REPORT.—Not later than 1 year after the date of enactment of this subsection, the Secretary shall submit to the appropriate congressional committees a report on updates to and the implementation of the Plan.
- (7) SECURITY CLEARANCES.—The Secretary shall, to the greatest extent practicable, take steps to expedite the security clearances needed for designated public and private stakeholders to receive and obtain access to classified information distributed under this section, as appropriate.
- (8) CLASSIFICATION OF MATERIAL.—The Secretary, to the greatest extent practicable, shall provide designated public and private stakeholders with transportation security information in an unclassified format.
- (v) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY.—
 - (1) APPLICATION OF SUBSECTION.—
 - (A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of chapter 701 of title 46 and under a provision of this title other than a provision of chapter 449 (in this subsection referred to as an “applicable provision of this title”).
 - (B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed and orders issued by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of this title.
 - (C) NONAPPLICATION TO CERTAIN VIOLATIONS.—
 - (i) Paragraphs (2) through (5) do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—
 - (I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

(II) by a member of the armed forces of the United States when performing official duties; or
 (III) by a civilian employee of the Department of Defense when performing official duties.

(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary's designee.

(2) CIVIL PENALTY.—

(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under an applicable provision of this title.

(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under an applicable provision of this title. The Secretary shall give written notice of the finding of a violation and the penalty.

(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, a court may not re-examine issues of liability or the amount of the penalty.

(C) JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—

(i) the amount in controversy is more than—

(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(II) \$50,000 if the violation was committed by an individual or small business concern;

(ii) the action is in rem or another action in rem based on the same violation has been brought; or

(iii) another action has been brought for an injunction based on the same violation.

(D) MAXIMUM PENALTY.—The maximum civil penalty the Secretary administratively may impose under this paragraph is—

(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

(ii) \$50,000, if the violation was committed by an individual or small business concern.

(E) NOTICE AND OPPORTUNITY TO REQUEST HEARING.—Before imposing a penalty under this section the Secretary shall provide to the person against whom the penalty is to be imposed—

(i) written notice of the proposed penalty; and

(ii) the opportunity to request a hearing on the proposed penalty, if the Secretary receives the request not

later than 30 days after the date on which the person receives notice.

(4) COMPROMISE AND SETOFF.—

(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection.

(B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

(5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

(6) DEFINITIONS.—In this subsection:

(A) PERSON.—The term “person” does not include—

- (i) the United States Postal Service; or
- (ii) the Department of Defense.

(B) SMALL BUSINESS CONCERN.—The term “small business concern” has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).

(7) ENFORCEMENT TRANSPARENCY.—

(A) IN GENERAL.—Not later than December 31, 2008, and annually thereafter, the Secretary shall—

(i) provide an annual summary to the public of all enforcement actions taken by the Secretary under this subsection; and

(ii) include in each such summary the docket number of each enforcement action, the type of alleged violation, the penalty or penalties proposed, and the final assessment amount of each penalty.

(B) ELECTRONIC AVAILABILITY.—Each summary under this paragraph shall be made available to the public by electronic means.

(C) RELATIONSHIP TO THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT.—Nothing in this subsection shall be construed to require disclosure of information or records that are exempt from disclosure under sections 552 or 552a of title 5.

(D) ENFORCEMENT GUIDANCE.—Not later than 180 days after the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary shall provide a report to the public describing the enforcement process established under this subsection.

(w) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for—

(1) railroad security—

- (A) \$488,000,000 for fiscal year 2008;
- (B) \$483,000,000 for fiscal year 2009;
- (C) \$508,000,000 for fiscal year 2010; and
- (D) \$508,000,000 for fiscal year 2011;

(2) over-the-road bus and trucking security—

- (A) \$14,000,000 for fiscal year 2008;
- (B) \$27,000,000 for fiscal year 2009;
- (C) \$27,000,000 for fiscal year 2010; and
- (D) \$27,000,000 for fiscal year 2011; and

- (3) hazardous material and pipeline security—
 - (A) \$12,000,000 for fiscal year 2008;
 - (B) \$12,000,000 for fiscal year 2009; and
 - (C) \$12,000,000 for fiscal year 2010.

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